

original

LEIBOWITZ & SPENCER

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

MATTHEW L. LEIBOWITZ, P.A.
JOHN M. SPENCER, P.C.
JOSEPH A. BELISLE

OF COUNSEL
SANFORD L. BOHRER
SID DAVIDOFF
JEROME M. BECKER
605 3RD AVENUE
34TH FLOOR
NEW YORK, N.Y. 10158

* NOT ADMITTED TO
FLORIDA BAR

SUITE 1450

AMERIFIRST BUILDING
ONE SOUTHEAST THIRD AVENUE
MIAMI, FLORIDA 33131-1715

TELEPHONE (305) 530-1322
TELECOPIER (305) 530-9417

SUITE 500

1000 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036

DOCKET FILE COPY ORIGINAL

January 26, 1993

RECEIVED

JAN 26 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
Washington, D.C. 20554


Re: MM Docket No. 92-252
FM Table of Allotments
Tavares and Leesburg, Florida
Our File No. 46013

Dear Ms. Searcy:

On behalf of J.J. Taylor Companies, Inc., licensee of station WXXL(FM), Leesburg, Florida, enclosed please find an original and four copies of a reply to the comments of Women in Fla Broadcasting, Inc. on the Notice of Proposed Rule Making in the above-referenced proceeding.

If any additional information is desired, please communicate with the undersigned.

Respectfully submitted,


John M. Spencer
Counsel for
J.J. Taylor Companies, Inc.

Encls. (5)

JMS:hs

No. of Copies rec'd
List A B C D E

074

RECEIVED

JAN 26 1993

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Rule 73.202(b)) MM Docket No. 92-252
Table of Allotments,) RM-8099
FM Broadcast Stations)
(Tavares, Florida))

TO: Chief, Allocations Branch

REPLY COMMENTS

1. By Notice of Proposed Rule Making in the above-captioned proceeding, 7 FCC Rcd 7570 (1992), the Commission gave notice of a proposal by J.J. Taylor Companies, Inc. ("Taylor") to reallocate channel 294C1 from Leesburg, Florida, to Tavares, Florida, and to modify the license of Taylor's station WXXL(FM) accordingly. Taylor filed supporting comments, and Women in Fla Broadcasting, Inc. ("Women") filed a counterproposal suggesting different reference coordinates. Taylor, by its attorney and pursuant to Rules 1.415 and 1.420, hereby replies to Women's counterproposal.

2. Background. WXXL is licensed to operate as a class C1 FM station licensed to Leesburg, Florida. Taylor's petition for rule making proposed no change in WXXL's transmission facilities, simply a redesignation of its community of license as Tavares, Florida.¹

¹ Although the seat of Lake County, Tavares presently has no local broadcast transmission service. In contrast, Leesburg has three fulltime aural transmission services.

3. Women is the licensee of WDFL-FM, Cross City, Florida. The Commission recently upgraded WDFL-FM's allotment to class C1,² and Women filed an appropriate application³ to implement the upgrade. Women's application requested processing under Rule 73.215, since the proposed site is 5 kilometers short-spaced to the licensed site of WXXL.

4. In its Notice of Proposed Rule Making, supra, the Commission noted that the proposed WXXL reallocation is short-spaced to the WDFL-FM application, but did not explain the significance of the fact. However, it appears that processing of Women's application may have been delayed pending resolution of this proceeding.

5. Discussion. Since Taylor has proposed no change affecting station separations, the fact that the "new" Tavares reference point is short-spaced to WDFL-FM's application site should be irrelevant. Simply put, there is no conflict between Taylor's proposal here and Women's application.

6. To the extent there appears to be a conflict, it exists only in the realm of legal fictions, and has significance only if it artificially impedes processing of the stations' respective proposals. That result would be unfortunate, and contrary to the

² Report and Order in MM Docket No. 87-455, 4 FCC Rcd 5599 (1989), recon. denied, 7 FCC Rcd 2557 (1992).

³ File No. BPH-8911291B.

interest of the public in receiving the benefits of a preferential distribution of local service (with respect to WXXL) and improved facilities (WDFL-FM), as well as the private interests of Taylor and Women in making their desired changes as efficiently as possible.

7. Nevertheless, concern arises out of uncertainty over the implementation of recent rule changes affecting FM allotments and applications, chiefly in MM Docket Nos. 87-121 and 91-348.

8. Taylor therefore wishes to make it abundantly clear that in proffering its proposal, it took great care to maintain the status quo with respect to all station separations (including WDFL-FM), while still satisfying all technical requirements with respect to its proposed new community of license.

9. Women has proposed to resolve the "problem" of the allotment "short-spacing" by specifying different reference coordinates for Taylor's Tavares proposal. Taylor believes a far better approach would be simply to allow existing non-73.215 stations (such as WXXL) to make any allotment changes that do not change required separations and do not degrade existing separations, without resort to the artifice of meaningless reference coordinates.

10. (Any other result would severely infringe on the flexibility of non-73.215 stations to seek facility changes as circumstances warranted, in ways not properly explored in MM Docket No.

87-121. By way of hypothetical example, if WDFL-FM's 73.215 application eliminated all fully spaced WXXL reference sites, would WXXL be precluded from changing city of license? Such a result would fly in the face of common sense.)

11. Taylor therefore urges the Commission to act on Taylor's initial proposal as filed, which simply maintains the separation status quo. At the same time, Taylor sees no reason why its proposal should delay the processing of Women's application, as described in Women's comments.⁴

12. However, Taylor is willing to accept the revised reference coordinates Women has suggested, provided it:

- (a) Will expedite action on Taylor's proposal and Women's application, and
- (b) Will not require that an application to effectuate the change in city of license Taylor seeks at WXXL's present licensed site be processed under Rule 73.215, with the loss of protections that would entail.

⁴ Of course a reason would exist for linking allotment and application proceedings if it were necessary to protect a yet-unselected transmitter site where the allotment could be implemented. But that is not the case here. As shown in its petition for rule making, Taylor already has a specific transmitter site that satisfies all requirements for the proposed allotment, and has proposed no site change.

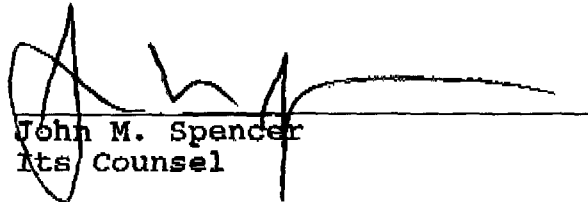
Similarly, Women has proposed a specific transmitter site and facilities that fully protect WXXL's operation, both as licensed and as proposed in Taylor's petition for rule making.

13. In any event, Taylor urges the Commission to proceed without delay on its proposal in this proceeding. The change will clearly serve the public interest, has drawn no adverse comment, and is ripe for action.

Respectfully submitted,

J.J. TAYLOR COMPANIES, INC.

By:



John M. Spencer
Its Counsel

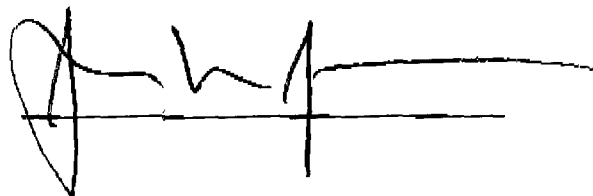
Leibowitz & Spencer
One S.E. Third Avenue, Suite 1450
Miami, Florida 33131
(305) 530-1322

January 26, 1993

CERTIFICATE OF SERVICE

I, John M. Spencer, hereby certify that a copy of the attached Reply Comments in MM Docket No. 92-252 were sent this 26th day of January, 1993, to the following person by First Class U.S. Mail, in fulfillment of the requirements of Rules 1.47 and 1.420:

Robert J. Rini, Esq.
Rini & Coran, P.C.
1350 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036
Counsel for
WOMEN IN FLA BROADCASTING, INC.

A handwritten signature in black ink, appearing to be 'Rini', written over a horizontal line.